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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/824,169	04/14/2004	Michael Primm	A2000-718710	6353

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EXAMINER
ALAM, SHAHID AL

ART UNIT	PAPER NUMBER
2162	

NOTIFICATION DATE	DELIVERY MODE
08/11/2008	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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	Application No.	Applicant(s)
	10/824,169	PRIMM, MICHAEL
Office Action Summary	Examiner	Art Unit	
	Shahid Al Alam	2162	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>11 June 2008</u>.
2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.
3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-16 and 36-40</u> is/are pending in the application.
    4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5)☐ Claim(s) _____ is/are allowed.
6)☒ Claim(s) <u>1-16 and 36-40</u> is/are rejected.
7)☐ Claim(s) _____ is/are objected to.
8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.
10)☒ The drawing(s) filed on <u>14 April 2004</u> is/are: a)☒ accepted or b)☐ objected to by the Examiner.
    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    a)☐ All b)☐ Some * c)☐ None of:
      1.☐ Certified copies of the priority documents have been received.
      2.☐ Certified copies of the priority documents have been received in Application No. _____.
      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)
2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3)☒ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date <u>08192004-06162008</u>.
4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.
5)☐ Notice of Informal Patent Application
6)☐ Other: _____.

U.S. Patent and Trademark Office
PTOL-326 (Rev. 08-06)   **Office Action Summary**   Part of Paper No./Mail Date 08042008

DETAILED ACTION

1.   Claims 1 – 16 and 36 – 40 are pending in this Office action.

Response to Arguments

2.   Applicant's arguments filed June 18, 2008 have been fully considered but they
are not persuasive.

3.   Applicant's main argument is that Wahl does not disclose "to implement a kernel-
mode device driver for gathering environmental data via the sensor interface and
manipulating journal based data system associated with the environmental data
gathered via sensor interface."

        Examiner respectfully disagrees all of the allegations as argued. Examiner, in his
previous office action, gave detail explanation of claimed limitation and pointed out
exact locations in the cited prior art.

        Examiner is entitled to give claim limitations their broadest reasonable
interpretation in light of the specification. See MPEP 2111 [R-1]

        Interpretation of Claims-Broadest Reasonable Interpretation

        During patent examination, the pending claims must be 'given the broadest
reasonable interpretation consistent with the specification.' Applicant always has the
opportunity to amend the claims during prosecussion and broad interpretation by the
examiner reduces the possibility that the claim, once issued, will be interpreted more
broadly than is justified. In re Prater, 162 USPQ 541,550-51 (CCPA 1969).

In response to applicant's argument that Wahl does not disclose gathering environmental data via the sensor interface and manipulating journal based data system associated with the environmental data gathered via sensor interface, Wahl teaches a graphical user interface which enables a user to create and configure throttles (similar to sensor interface). Throttles are user-defined tests and actions that evaluated by the primary mirror daemon to regulate network bandwidth, CPU, and writelog device utilization during data update mirroring. A graphical user interface is preferably provided by the computer network remote data mirroring system for configuring the logical groups as well as for monitoring performance of the remote data mirroring system. With respect to Applicant's argument, Wahl further teaches data and metadata substantially as claimed, however, it would have been obvious to a person of ordinary skill in the art at the time of the invention was to modifying data to be environmental data since differences in type of data do not distinguish the invention in term of patentability.

See In re Gulack, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983) (when descriptive material is not functionally related to the substrate, the descriptive material will not distinguish the invention from the prior art in terms of patentability).

In response to Applicant's argument that "In re Gulack" is not applicable to the present case, Applicant's arguments have been considered but are not correct. The terminology "functional descriptive material" does not merely require descriptive material that has some possible function. Instead, it requires material that interacts with the substrate on which it is placed to change functionality of the substrate. In the present invention, the "substrate" is a computer system. Merely applying environmental

data to a computer does not change the way the computer system functions. It is merely a set of data records. The computer still functions in the same way. As a result, it is non-functional descriptive material and cannot be considered functional descriptive material in the manner intended from *In re Gulack.*

See also MPEP 2106.01: However, USPTO personnel <u>need not give patentable weight</u> to printed matter absent a new and unobvious functional relationship between the printed matter and the substrate. See In re Lowry, 32 F.3d 1579, 1583-84, 32 USPQ2d 1031, 1035 (Fed. Cir. 1994); In re Ngai, 367 F.3d 1336, 70 USPQ2d 1862 (Fed. Cir. 2004).

In view of the above, the examiner contends that all limitations as recited in the claims have been addressed in this Action and for that reasons, Examiner believed that rejection of the last Office action was proper.

Specification

4.   The disclosure is objected to because "an XML-based file encoding" no support has been provided.

Wherein, the meaning of every term used in any of the claims should be apparent from the descriptive portion of the specification with clear disclosure as to its import; and in mechanical cases, it should be identified in the descriptive portion of the specification by reference to the drawing, designating the part or parts therein to which the term applies. A term used in the claims may be given a special meaning in the description. See MPEP 608.01(o) and MPEP § 2111.01 and § 2173.05(a).

Claim Rejections - 35 USC § 102

5.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by
another filed in the United States before the invention by the applicant for patent or (2) a patent
granted on an application for patent by another filed in the United States before the invention by the
applicant for patent, except that an international application filed under the treaty defined in section
351(a) shall have the effects for purposes of this subsection of an application filed in the United States
only if the international application designated the United States and was published under Article 21(2)
of such treaty in the English language.

Claims 1 – 16 and 36 – 40 are rejected under 35 U.S.C. 102(e) as being

anticipated by U.S. Patent Number 6,442,706 issued to Steven B. Wahl et al. ("Wahl").

With respect to claim 1, Wahl teaches a system comprising:

a processor; a sensor interface responsive to the processor and memory

responsive to the processor (see abstract), the memory including program instructions

operable to direct the processor to implement a kernel-mode device driver for gathering

environmental data via sensor interface and for manipulating a journal based data

system associated with the environment data gathered via the sensor interface (column

6, lines 28 – 32 and lines 59 – 67).

Claim 36 is essentially the same as claim 1 above except that it set forth the

claimed invention as a method rather than a system and rejected for the same reasons

as applied hereinabove.

Claim 39 is essentially the same as claim 1 above except that it set forth the
claimed invention as a computer readable medium rather than a system and rejected for
the same reasons as applied hereinabove.

As to claims 2 and 37, the kernel-mode device driver runs with supervisor
privilege within a kernel of an operating system (column 9, lines 5 – 10).

As to claim 3, the kernel-mode device driver comprises code that runs with kernel
privilege and provides access to a hardware device (column 9, lines 5 – 10).

As to claims 4 and 38, the memory further comprises program instructions for
implementing a monitoring application (column 3, lines 49 – 54).

As to claim 5, a network interface responsive to the processor (column 3, lines
49 – 54).

As to claim 6, the memory further comprises program instructions for
implementing a notification application for communicating data events via the network
interface (column 2, lines 1 – 6).

As to claim 7, the memory further comprises program instructions for
implementing a web server for communicating data via the network interface (column
23, lines 61 – 64).

As to claim 8, implementing a plurality of variable definitions in the journal based
data system (column 6, lines 59 – 67).

As to claim 9, implementing each variable definition of the plurality of variable definitions to have an associated variable and to include an oldest update field and a latest update field (column 7, lines 37 – 48).

As to claim 10, implementing a plurality of update records in the journal based data system (column 7, lines 44 – 48).

As to claim 11, implementing each variable update record of the plurality of variable update records to have an associated variable and to include a variable value, a next update pointer, and a previous update pointer (column 7, lines 37 – 53).

As to claim 12, implementing the previous update pointer to point to an oldest update field of a variable definition associated with the associated variable (column 7, lines 37 – 53).

As to claim 13, implementing the next update pointer to point to the latest update field of a variable definition associated with the associated variable (column 7, lines 37 – 53).

As to claim 14, implementing a context record in the journal based data system (column 7, lines 37 – 38).

As to claim 15, implementing a current timestamp in the context record (column 7, lines 38 – 40).

As to claim 16, implementing, in the context record, a next update field including a pointer to a next update in a global journal of update records (column 7, lines 41 – 48).

As to claim 40, decoding, from an XML-encoded file, a value of at least one persistent variable included in the journal based data system (column 7, lines 37 – 53).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shahid Al Alam whose telephone number is (571) 272-4030. The examiner can normally be reached on Monday-Thursday 8:00 A.M.- 4:00 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John E. Breene can be reached on (571) 272-4107. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Shahid Al Alam/
Primary Examiner, Art Unit 2162
August 4, 2008